

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Complaint of)
WINSTON HOSHINO, HOWARD KAWABATA,) DOCKET NO. 2007-0018
CHARLES WEBSTER, ET AL.,)
Complainants,)
vs.)
HAWAII ELECTRIC LIGHT COMPANY, INC.,)
Respondent.)

DECISION AND ORDER

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

PUBLIC UTILITIES
COMMISSION

2008 JUL -7 P 1:50

FILED

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OF THE STATE OF HAWAII

In the Matter of the Complaint of)	
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WINSTON HOSHINO, HOWARD KAWABATA,)	DOCKET NO. 2007-0018
CHARLES WEBSTER, ET AL.,)	
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Complainants,)	
)	
vs.)	
)	
HAWAII ELECTRIC LIGHT COMPANY, INC.,)	
)	
Respondent.)	
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DECISION AND ORDER

By this Order, the commission adopts, in toto, the Findings of Fact, Conclusions of Law, and Recommended Decision and Order of Hearings Officer ("Recommended Decision") regarding the Complaint of WINSTON HOSHINO, HOWARD KAWABATA, CHARLES WEBSTER, DANNY KAYANO, LLOYD NISHIDA, COLLETTE SHIMABUKURO (TAKEUCHI), AND PATRICK ARBLES ("Complainants"), as the commission's final decision and order in this matter.

I.

Background

On February 28, 2008, the duly appointed hearings officer issued the Recommended Decision in which the hearings officer recommended:

1. . . . that Complainants should be allowed continued reasonable access to [HAWAII ELECTRIC LIGHT COMPANY, INC.'s ("Respondent")] records and the Transformer until this proceeding has been fully concluded (i.e., until all appeal rights have been exhausted).

2. This Hearings Officer recommends that the commission find and conclude that: (1) [Respondent's] denial of Complainants' request for reimbursement for damages and services, in this case, was proper; and (2) [Respondent] did not engage in discriminatory treatment, as alleged by Complainants. Based on the findings and conclusions summarized herein . . . this Hearings Officer recommends that Complainants' request that the commission order [Respondent] to reimburse them for their personal losses, damages, and repairs (i.e., third requested relief) should be denied.

3. . . . Complainants request that the commission order [Respondent] not to retaliate in any way or form against Complainants, [Respondent's] employees, and Oceanic Cable employees (i.e., fourth requested relief). This requested relief does not appear to be appropriate or necessary . . . Therefore, this Hearings Officer recommends that Complainants should not be granted this relief.

Recommended Decision, at IV.B.

The Recommended Decision was served on Complainants, Respondent, and the DIVISION OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate")¹ on February 28, 2008, via first class mail.

II.

Discussion

HAR § 6-61-130(a) requires, in relevant part, that a party taking exception to a hearings officer's Recommended Decision file such written exceptions within ten working days after service to the parties of the Recommended Decision. HAR § 6-61-130(b) requires that the written exceptions:

- (1) Set forth specifically the questions of procedure, fact, law, or policy to which exceptions are taken;
- (2) Identify that part of the hearings officer's report and recommended order to which exceptions are made;
- (3) Designate by page citation the portions of the record relied upon;
- (4) Cite any authorities relied upon; and

¹The Consumer Advocate is an ex officio party to this docket pursuant to Hawaii Revised Statutes ("HRS") § 269-51, and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

(5) State all the grounds and reasons for exceptions to a ruling, finding, conclusion, or recommendation. Grounds not cited or specifically urged are waived.

HAR § 6-61-130(b). Neither Complainants, Respondent, nor the Consumer Advocate filed written exceptions to the Recommended Decision.

Having reviewed the entire record in this matter and pursuant to HRS § 269-6, the commission concludes that the Recommended Decision, attached hereto as Exhibit A, should be adopted in toto as the commission's final decision and order in this matter.

III.

Order

THE COMMISSION ORDERS:


The Recommended Decision, attached hereto as Exhibit A, is adopted in toto as the commission's final decision and order in this matter.


DONE at Honolulu, Hawaii

JUL - 7 2008

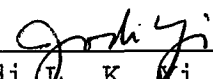
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

By: 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Jodi L. K. Ki
Commission Counsel

2007-0018.laa

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Complaint of)	
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WINSTON HOSHINO, HOWARD KAWABATA,)	DOCKET NO. 2007-0018
CHARLES WEBSTER, ET AL.,)	
)	
Complainants,)	HEARINGS OFFICER'S
)	FINDINGS OF FACT,
vs.)	CONCLUSIONS OF LAW,
)	AND RECOMMENDED
)	DECISION AND ORDER
HAWAII ELECTRIC LIGHT COMPANY, INC.,)	
)	
Respondent.)	
)	

HEARINGS OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDED DECISION AND ORDER

I.

INTRODUCTION

On January 18, 2007, WINSTON HOSHINO, HOWARD KAWABATA, CHARLES WEBSTER, DANNY KAYANO ("Mr. Kayano"), LLOYD NISHIDA, COLETTE SHIMABUKURO (TAKEUCHI), and PATRICK ARBLES (collectively referred to as the "Complainants") filed a formal complaint against HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO" or the "Respondent") with the commission. The complaint alleged that HELCO: (1) denied Complainants' request for reimbursement for damages and services resulting from a faulty and outdated transformer; and (2) engaged in discriminatory treatment by not updating the transformer servicing Complainants' end of the subdivision, as compared to the other transformers on the same street. Complainants request that the commission: (1) compel

EXHIBIT A

HELCO to release their records for any repairs on Pole No. 9 during the period from April 2005 to April 2006; (2) compel HELCO to display the transformer that was formerly on Pole No. 9; (3) order HELCO to reimburse Complainants for their personal losses, damages, and repairs; and (4) order HELCO not to retaliate in any way or form against Complainants, HELCO employees, and Oceanic Cable employees.

The DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate") was served a copy of the complaint. The Consumer Advocate did not actively participate in this proceeding.

By Order No. 23297, filed on March 13, 2007, the commission ordered HELCO to file an answer to the formal complaint within 20 days of the date of Order No. 23297. On April 3, 2007, HELCO requested an extension of time from April 4, 2007, until April 25, 2007, to file its answer to the complaint to enable Respondent to complete its investigation of the "specifics" of the complaint ("Extension Request"). By letter dated April 19, 2007, the commission granted HELCO's Extension Request.

On April 25, 2007, Respondent filed its Answer to Complaint ("Answer") denying many of the allegations and assertions contained in the complaint and requesting that the commission deny the relief requested in the complaint.

On July 20, 2007, the commission issued Prehearing Order No. 23555 setting forth the issues, schedule, and procedures that would control the course of this proceeding ("Prehearing Order"). Pursuant to the Prehearing Order, the issues of this proceeding are:

- A. Whether HELCO properly denied Complainants' request for reimbursement for damages and services incurred by an allegedly faulty outdated transformer.
- B. Whether HELCO engaged in discriminatory treatment by not updating the transformer serving Complainants' end of the subdivision as compared to other transformers on the same street.

A hearing on the complaint was held at the State Building, Conference Room B, 75 Aupuni Street in Hilo, Hawaii, at 9:00 a.m. on September 17, 2007 ("Hearing"). Kevin M. Katsura, attorney for HELCO, appeared on behalf of Respondent. Complainants, Winston Hoshino, Howard Kawabata (and his wife Ann Kawabata), Danny Kayano, and Lloyd Nishida, appeared on their own behalf. Hearings Officer Ji Sook Kim presided over the Hearing.

This Hearings Officer, having considered the testimonies and other evidence presented at the Hearing and the entire record in this matter, hereby renders the following findings of fact, conclusions of law, and recommended decision and order.

II.

FINDINGS OF FACT

1. HELCO, a public utility as defined by Hawaii Revised Statutes § 269-1, is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Hawaii.

2. Complainants are residents of the Palakiko Subdivision on the island of Hawaii.

3. HELCO provides electrical power to the Complainants' homes through Pole No. 9 on Kaiao Street.

4. On or about January 23, 2004, and prior to the events of April 2006, HELCO replaced the fuse serving the transformer on Pole No. 9.

5. On April 2, 2006, a "severe" lightning storm occurred in and around Kaiao Street.

6. HELCO has no record of receiving any trouble calls from Complainants or any other individuals served by Pole No. 9 regarding power related concerns on April 2, 2006.

7. On April 5, 2006, the transformer failed on Pole No. 9 resulting in a power disruption to Complainants' homes (a power outage lasting over three hours) and causing damage to Complainants' property.

8. HELCO received trouble calls from Complainants and/or other individuals who live on Kaiao Street regarding the April 5, 2006 power outage.

9. On or about April 5, 2006, the transformer on Pole No. 9 was not equipped with a lightning arrestor.

III.

CONCLUSIONS OF LAW

Based on the Prehearing Order and the foregoing findings of fact, this Hearings Officer makes the following conclusions of law. Any findings of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

A.

Whether HELCO properly denied Complainants' request for reimbursement for damages and services incurred by an allegedly faulty outdated transformer.

1. HELCO denied Complainants' request for reimbursement for damages and services incurred based on its finding that the transformer on Pole No. 9 serving Complainants' homes (the "Transformer") was damaged by the April 2, 2006 lightning storm. HELCO stated that it is not liable for the damages under Rule 16 of its tariff ("Rule 16") since the rule explicitly excludes liability for any damage not within HELCO's control, such as a storm.

2. The central matter in dispute regarding this issue is what caused the Transformer to fail. Complainants allege that the Transformer was outdated and faulty. Primarily, Complainants

appear to allege that the Transformer should have been updated with a lightning arrestor prior to the April 5, 2006 failure of the Transformer; specifically, when power was previously disrupted to Complainants' home during a lightening storm on or about January 23, 2004 (the "2004 Incident").¹ Complainants appear to further allege that had the Transformer been equipped with a lightning arrestor, the Transformer failure of April 5, 2006, would not have occurred and/or the failure would not have caused damage to Complainants' property. Complainants failed to provide credible evidence to fully support their claims.²

3. For the 2004 Incident, following standard practice, HELCO replaced the fuse serving the Transformer since it determined that conditions, at that time, did not warrant the

¹It appears that while Complainants originally believed that prior work on Pole No. 9 was conducted in 2005, HELCO's records indicate that work on Pole No. 9 was conducted on or about January 23, 2004, and that HELCO's work crew in the area in 2005 was responding to concerns regarding Pole No. 39 (i.e., located at the intersection of Haihai and Kaiao Streets). Complainants did not contest the information in HELCO's records. See Transcript of Hearing held on September 17, 2007, regarding Docket No. 2007-0018 ("Transcript") at 38-39. See also Complainants' Complaint filed on January 18, 2007, at 1; HELCO's Answer at 2-3, 14.

²Under the Prehearing Order, Complainants had the opportunity to issue information requests ("IRs") on HELCO and clearly set forth their position regarding each issue in opening and reply briefs. Complainants failed to adhere to the Schedule of Proceedings set forth in the Prehearing Order. Among other things, Complainants: (1) decided not to serve HELCO with any IRs (due on August 1, 2007); (2) failed to respond to HELCO's IRs issued to Complainants on August 1, 2007 (due on August 15, 2007); and failed to submit their opening brief (due on August 29, 2007). Accordingly, Complainants had ample opportunity to build their case in chief prior to the Hearing but voluntarily choose not to take advantage of the discovery procedures established for this proceeding.

replacement of the Transformer. Complainants provided no credible evidence that HELCO failed to follow established practice. HELCO, on the other hand, provided testimonial evidence that after replacing the fuse in response to the 2004 Incident, it did not receive any complaints regarding, or indications of, any problems with the Transformer, prior to April 5, 2006.³ Complainants did not dispute HELCO's statements.⁴

4. Additionally, HELCO provided expert testimonial evidence that the Transformer failure of April 5, 2006, was a result of the lightning storm of April 2, 2006. In sum, HELCO's witness stated that tests indicated that the Transformer failed due to an electrical fault consistent with the types of failures experienced during or after lightning storms.⁵ HELCO's witness further explained that cases similar to this, wherein the Transformer failed three days after the April 2, 2006 lightning

³See Transcript at 38-39.

⁴During the Hearing, one of the Complainants, Mr. Kayano, indicated that he had telephoned HELCO on April 2, 2006, which was contrary to HELCO's representations. See Transcript at 75-77. Accordingly, this Hearings Officer requested that HELCO re-examine its records and provide a written response by October 1, 2007, regarding whether or not it received a telephone call from Mr. Kayano on April 2, 2006. By letter dated October 1, 2007, and filed on October 2, 2007, HELCO states that it doubled-checked its trouble call records and did not find any record of a telephone call from Mr. Kayano on April 2, 2006. Moreover, HELCO represents that Mr. Kayano called Mr. Ignacio, HELCO's Distribution Department Manager, on or about 4:30 p.m. on September 17, 2007, to indicate that he spoke in error at the Hearing and that he made a trouble call on April 5, 2006 as opposed to April 2, 2006. HELCO states that its trouble call records do reflect that Mr. Kayano called HELCO on April 5, 2006 at approximately 11:53 a.m.

⁵Id. at 21.

storm, have been seen in the past and that the Transformer failure, in this case, was triggered by a "pinhole-size damage in the insulation" of the Transformer.⁶ Complainants did not provide evidence to dispute HELCO's contention.

5. Moreover, evidence was provided that various types of transformers (i.e., those with internal or external lightning arrestors, and without lightning arrestors) were affected by the April 2, 2006 lightning storm.⁷ HELCO's expert witness testified that while lightning arrestors reduce the risk, they do not guarantee that problems will not occur, and specifically stated that "[w]e have many cases where lightning arrestors are installed and we still have problems."⁸ No evidence was presented to dispute HELCO's claims.

6. Rule 16 of HELCO's Tariff states the following:

The Company will exercise reasonable diligence and care to furnish and deliver a continuous and sufficient supply of electric energy to the customer and to avoid any interruption of delivery of the same. The Company will not be liable for interruption or insufficiency of supply or any loss, cost, damage, or expense of any nature whatsoever, occasioned thereby if caused by accident, storm, fire, strike, riots, war or any cause not within the Company's control through the exercise of reasonable diligence and care.

⁶Id. at 23.

⁷Id. at 75.

⁸Id.

7. Based on the foregoing, this Hearings Officer finds that HELCO's application of Rule 16 in this case appears to be proper. Complainants failed to prove their claims. While evidence was placed in the record that the risk of damage would have lessened had the Transformer been equipped with a lightning arrestor,⁹ Complainants failed to present evidence that the Transformer was outdated or faulty, or that HELCO failed to exercise reasonable diligence and care. In particular, Complainants failed to present relevant evidence to indicate that the Transformer should have been replaced prior to April 5, 2006. Moreover, Complainants did not provide evidence to disprove HELCO's finding that the Transformer failure of April 5, 2006 was a result of damage from the April 2, 2006 lightning storm. Accordingly, this Hearings Officer concludes that HELCO's denial of Complainants' request for reimbursement for damages and services, in this case, was proper.

B.

Whether HELCO engaged in discriminatory treatment by not updating the transformer serving Complainants' end of the subdivision as compared to other transformers on the same street.

1. Complainants failed to provide evidence that HELCO engaged in discriminatory treatment. As set forth above, Complainants appear to allege that HELCO should have updated the

⁹Id. at 65.

Transformer with a lightning arrestor in response to the 2004 Incident, and that not doing so, at that time, constitutes discriminatory treatment since the other transformers on Kaiao Street have either an internal or external lightning arrestor. However, the record does not support their allegation.

2. HELCO presented expert testimonial evidence stating that overhead standards do not require the placement of lightning arrestors at transformer locations and specifically stated that it is "not the standard of care" to place lightening arrestors at transformer locations.¹⁰ HELCO recognized that the Transformer was not equipped with a lightning arrestor; however, it stated that the Transformer was not required to have one.¹¹ Complainants did not provide relevant evidence to dispute the testimony presented by HELCO's witness.

3. While HELCO states that it began the practice of purchasing transformers with internal lightning arrestors within the last ten year period, its decision to retain the Transformer and change the fuse, as opposed to replacing it after the 2004 Incident was based on HELCO's standard practice. According to HELCO, its standard practice is to replace transformers: (1) when a defect is detected that may lead to failure such as visible corrosion to the transformer tank; (2) when the loading on the transformer exceeds or is anticipated to exceed the rating of the transformer; (3) in conjunction with other distribution

¹⁰Id. at 37.

¹¹Id. at 38.

system upgrades such as voltage conversions and pole replacements; (4) if they contain PCB contaminated oil that poses higher environmental and potential health risks; (5) when a problem is detected; (6) when a problem is reported by customers; and (7) when failure occurs.

4. HELCO appears to have properly applied its standard practice. According to HELCO, after replacing the fuse serving the Transformer on or about January 23, 2004, "power was restored as normal" and there were no complaints or indications of any kind regarding problems with the Transformer, until April 5, 2006.¹² Additionally, as a result of the April 2, 2006 lightning storm in the general area of Kaiao Street, HELCO replaced the fuses of various transformers were associated with power interruptions, but did not replace the transformers, similar to HELCO's response regarding the 2004 Incident.¹³ No evidence was placed in the record to indicate that HELCO had not applied its standard practice regarding the 2004 Incident.

5. Moreover, during questioning, HELCO's expert witness stated that the transformer on Pole No. 9 was not the only transformer on its system without a lightning arrestor. While HELCO's witness could not provide specific percentages, the witness stated that there is a mix throughout HELCO's system (i.e., transformers with no lightning arrestors, transformers with external lightning arrestors, and transformers with internal

¹²Id.

¹³See Respondent's Hearing Exhibit 3; Transcript at 33-34.

lightning arrestors) and that a larger number of transformers on HELCO's system either have external lightning arrestors or no lightning arrestors at all.

6. Based on the foregoing, this Hearings officer finds and concludes that HELCO did not engage in discriminatory treatment as alleged by Complainants.

IV.

RECOMMENDED DECISION AND ORDER

A.

Relief Requested

Complainants requested that the commission do the following:

1. Compel HELCO to release their records for any repairs on Pole No. 9 during the period from April 2005 to April 2006.
2. Compel HELCO to display the transformer that was formerly on Pole No. 9.
3. Order HELCO to reimburse Complainants for their personal losses, damages, and repairs; and
4. Order HELCO not to retaliate in any way or form against Complainants, HELCO employees, and Oceanic Cable employees.

B.

Recommended Decision and Order

1. With regard to the first and second requested remedies, as set forth in Section A, above, HELCO in its Answer

stated its willingness to comply with both requests.¹⁴ Specifically, HELCO stated its willingness to provide: (a) repair records for Pole No. 9 for the period April 2005 through April 2006 ("Repair Records"); and (b) display the transformer formerly on Pole No. 9 for viewing by Complainants. To obtain access to both, HELCO requested that Complainants contact its designated representative. The parameters set forth in HELCO's Answer to access its records and view the Transformer appears to be reasonable. The record is not clear on whether Complainants contacted HELCO for access to the records and the Transformer. While it is unclear whether continued access to these materials would be relevant based on HELCO's admissions in the record, continued reasonable access to these materials may be necessary for further proceedings regarding this docket. Accordingly, this Hearings Officer recommends that Complainants should be allowed continued reasonable access to HELCO's records and the Transformer until this proceeding has been fully concluded (i.e., until all appeal rights have been exhausted).

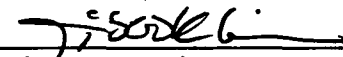
2. This Hearings Officer recommends that the commission find and conclude that: (1) HELCO's denial of Complainants' request for reimbursement for damages and services, in this case, was proper; and (2) HELCO did not engage in discriminatory treatment, as alleged by Complainants. Based on the findings and conclusions summarized herein, and set forth in Section III, above, this Hearings Officer recommends that

¹⁴See HELCO's Answer at 2-3.

Complainants' request that the commission order HELCO to reimburse them for their personal losses, damages, and repairs (i.e., third requested relief) should be denied.

3. Finally, Complainants request that the commission order HELCO not to retaliate in any way or form against Complainants, HELCO employees, and Oceanic Cable employees (i.e., fourth requested relief). This requested relief does not appear to be appropriate or necessary since, among other things: (1) there was no demonstration that HELCO engaged in retaliatory tactics in the past; and (2) appropriate avenues are available to any individual that believes that HELCO has engaged in retaliatory tactics with the commission and at state and federal levels, as applicable. Therefore, this Hearings Officer recommends that Complainants should not be granted this relief.

DATED: Honolulu, Hawaii FEB 28 2008.



Ji Sook Kim
Hearings Officer
Public Utilities Commission

2007-0018.ac

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Hearings Officer's Findings of Fact, Conclusions of Law, and Recommended Decision and Order of Hearings Officer upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI
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(Each served one copy)



Chief Clerk

DATED: February 28, 2008

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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